

providing for notice and public comment prior to adoption, when conditions warrant immediate action. That is not the case with this final rule.

Alternatives Considered

The alternatives considered in making this decision are the Tongass National Forest Alternatives identified in the November 2000 FEIS for the roadless rule, as further described in the rule's record of decision (66 FR 3262). These include the Tongass Not Exempt, Tongass Exempt, Tongass Deferred, and Tongass Selected Areas alternatives. The Tongass Not Exempt Alternative was selected by the Department as set out in the final roadless rule in January 2001, with mitigation explained in that record of decision. The Tongass Exempt Alternative would not apply the prohibitions of the roadless rule to the Tongass. Under the Tongass Deferred Alternative, the decision whether to apply the prohibitions of the roadless rule to the Tongass would be made in 2004 as part of the 5-year review of the Tongass Forest Plan. Under the Tongass Selected Areas Alternative, the prohibitions on road construction and reconstruction would apply only to certain land use designations, where commercial timber harvest would not be allowed by the forest plan. These areas comprise approximately 80 percent of the land in inventoried roadless areas on the Tongass.

The Environmentally Preferable Alternative

Under the National Environmental Policy Act, the agency is required to identify the environmentally preferable alternative (40 CFR 1505.2(b)). This is interpreted to mean the alternative that would cause the least damage to the biological and physical components of the environment, and which best protects, preserves, and enhances historic, cultural, and natural resources (Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026).

The Department concurs in the assessment described in the January 12, 2001, roadless rule record of decision (66 FR 3263) that the environmentally preferable alternative is the portion of Alternative 3 of the roadless rule FEIS combined with the Tongass Not Exempt Alternative, which would apply the roadless rule's prohibitions to the Tongass without delay.

Record of Decision Summary

For the reasons identified in this preamble, the Department has decided to select the Tongass Exempt

Alternative described in the roadless rule FEIS, until the Department promulgates a final rule concerning the application of the roadless rule within the State of Alaska, to which the agency sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864). Until such time, the Department is amending paragraph (d) of § 294.14 of the Roadless Area Conservation Rule set out at 36 CFR part 294 to exempt the Tongass National Forest from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas.

The Tongass Not Exempt Alternative (identified as the environmentally preferable alternative in the previous section) is not selected because the Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs and hardships to local communities of applying the roadless rule's prohibitions to the Tongass, outweigh any additional potential long-term ecological benefits; and therefore, warrant treating the Tongass differently from the national forests outside of Alaska.

The Tongass Deferred Alternative is not selected because there is no reason to delay a decision until 2004. On the contrary, a decision is needed now to reduce uncertainty about future timber supplies, which will enable the private sector to make investment decisions needed to prevent further job losses and economic hardship in local communities in Southeast Alaska.

The Tongass Selected Areas Alternative is not selected because it also would "be of considerable consequence at local levels where the timber industry is a cornerstone of the local economy and where the Forest Service has a strong presence," as stated in the roadless rule's record of decision. While these adverse socioeconomic consequences would be less than those under the Tongass Not Exempt Alternative, the roadless rule's record of decision states, "For most resources, the effects of this alternative would probably not be noticeably different from those under the Tongass Exempt Alternative." Accordingly, there is no noticeable environmental benefit to selecting the Tongass Selected Areas Alternative over the Tongass Exempt Alternative that would justify the additional socioeconomic costs.

This decision reflects the facts, as displayed in the FEIS for the roadless rule and the FEIS for the 1997 Tongass Forest Plan that roadless values are

plentiful on the Tongass and are well protected by the Tongass Forest Plan. The minor risk of the loss of such values is outweighed by the more certain socioeconomic costs of applying the roadless rule's prohibitions to the Tongass. Imposing those costs on the local communities of Southeast Alaska is unwarranted.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because this final rule raises novel legal or policy issues arising from legal mandates or the President's priorities, it has been designated as significant and, therefore, is subject to Office of Management and Budget (OMB) review in accordance with the principles set forth in E.O. 12866.

A cost-benefit analysis has been conducted on the impact of this final rule and incorporates by reference the detailed regulatory impact analysis prepared for the January 12, 2001, roadless rule, which included the Tongass Exempt Alternative. Much of this analysis was discussed and disclosed in the final environmental impact statement (FEIS) for the roadless rule. A review of the data and information from the original analysis and the information disclosed in the FEIS found that it is still relevant, pertinent, and sufficient in regard to exempting the Tongass from the application of the roadless rule. As documented in the Supplemental Information Report, the Department has concluded that no new information exists today that would significantly alter the results of the original analysis.

Moreover, this final rule has been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility